

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DIANE MAGRUDER

APPELLANT,

v.

**BETTY PAULEY, ET AL., DEFENDAN;
SUSAN MYERS, INDIVIDUALLY,
SUSAN MYERS REVOCABLE TRUST,
MARSHELLE CLARK, INDIVIDUALLY
AND MARSHELLE E. CLARK, P.C.**

RESPONDENTS.

DOCKET NUMBER WD75513 Consolidated with WD75638
DATE: October 8, 2013

Appeal From:

Boone County Circuit Court
The Honorable Mary (Jodie) C. Asel, Judge

Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Attorneys:

Anthony W. Bonuchi and William E. Quirk, Kansas City, MO, for appellant.

Thomas M. Harrison and Bryan C. Bacon, Columbia, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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AND MARSELLE E. CLARK, P.C.,**

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Boone County

Before Division Two: Thomas H. Newton, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Appellant Diane Magruder was a member of a limited liability company formed with three other real estate agents. Pursuant to the terms of the operating agreement, Magruder notified the other members of her intent to withdraw from the company. Also pursuant to the agreement, Magruder requested that the company obtain an appraisal of the business and pay her twenty-five percent of that value. The other members refused to do so. Following a bench trial on the issue of contract interpretation, the court ruled in favor of Magruder and ordered specific performance of the operating agreement, including the appraisal and payment of twenty-five percent thereof. A jury returned verdicts for Magruder on her collateral tort claims. Specific performance, however, was never completed because the appraisal which was finally obtained by the company contained an erroneous business value. A final judgment was entered which left this issue unresolved.

Magruder asserts three points on appeal. First, Magruder alleges that the trial court erred in denying her motion for a determination of the company's appraised value because there was sufficient evidence in the record that allowed the court to do so. Second, Magruder contends that the trial court erred in denying her motion for contempt when the Respondents failed to comply with the trial court's order of specific performance. And third, Magruder alleges that the trial court erred in denying her motion for attorney fees because such fees are provided for in the operating agreement.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

Division Two Holds:

(1) Because the court had before it sufficient evidence to determine the company's value in that it had the appraisal of the real property, the business appraisal and the information omitted from the appraisal, and because a court sitting in equity has the authority to do what is necessary to afford complete relief to the prevailing party, it was error for the court not to determine a business valuation after the Respondents refused to pay for the appraisal to be corrected.

(2) The trial court did not err in denying Magruder's motion for contempt when the Respondents failed to complete specific performance because a finding of civil contempt is within the court's broad discretion.

(3) Because an order of specific performance is a remedy to a breach of contract, and because the operating agreement at issue provides for attorney fees upon the breach of the agreement, the trial court erred in denying Magruder's motion for attorney fees.

Opinion by Gary D. Witt, Judge

October 8, 2013

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